

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NIKE, INC.,

Plaintiff,

vs.

USAPE LLC

Defendants.

Case No. 1:23-cv-00660-PGG

**NIKE, INC.'S ANSWER TO
USAPPE LLC's COUNTERCLAIM**

1. Nike admits that BAPE's counterclaim seeks cancellation of Nike's U.S. Trademark Reg. Nos. 3,451,905, 3,451,906, 5,820,374, 3,711,305, 6,368,694, and 6,368,691 (collectively, the "Asserted Marks"). Nike denies BAPE is entitled to any of the relief it seeks in its counterclaim. Nike denies the remaining allegations in Paragraph 1.

2. Nike denies the allegations in Paragraph 2.

3. Nike denies the allegations in Paragraph 3.

4. Nike denies the allegations in Paragraph 4.

5. Nike is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5, and on that basis, denies the allegations in Paragraph 5.

6. Nike admits the allegations in Paragraph 6.

7. Nike admits this Court has subject matter jurisdiction over BAPE's counterclaim.

Nike denies BAPE is entitled to any of the relief it seeks in its counterclaim. Nike denies the remaining allegations in Paragraph 7.

8. Nike admits it is subject to personal jurisdiction in this District in this case. Nike denies the remaining allegations in Paragraph 8.

9. Nike admits venue is proper in this Court in this case.
10. Nike admits it claims trade dress protection in the Asserted Marks, which cover various aspects of the designs of its Air Force 1, Air Jordan 1, and Dunk sneakers. Nike further admits that its Asserted Marks serve as source identifiers for high-quality products originating exclusively from Nike. Nike denies the remaining allegations in Paragraph 10.
11. Nike is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, and on that basis, denies the allegations in Paragraph 11.
12. Nike denies the allegations in Paragraph 12.
13. Nike denies the allegations in Paragraph 13.
14. Nike denies the allegations in Paragraph 14.
15. Nike is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15, and on that basis, denies the allegations in Paragraph 15.
16. Nike denies the allegations in Paragraph 16.
17. Nike denies the allegations in Paragraph 17.
18. Nike is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18, and on that basis, denies the allegations in Paragraph 18.
19. Nike denies the allegations in Paragraph 19.
20. Nike denies the allegations in Paragraph 20.
21. Nike admits that in 2009, it sued Already, LLC (“Already”) in the Southern District of New York, Case No. 1:09-cv-6366. Nike denies the remaining allegations in Paragraph 21.
22. Nike admits that, in Case No. 1:09-cv-6366, Already asserted a counterclaim challenging the validity of U.S. Trademark Reg. No. 3,451,905. Nike denies the remaining allegations in Paragraph 22.

23. Nike admits that, in connection with Case No. 1:09-cv-6366, Nike issued a Covenant Not To Sue. Nike denies the remaining allegations in Paragraph 23.

24. Nike admits the allegations in Paragraph 20.

25. Nike admits that, in 2013, the Supreme Court ruled that: “Already's only legally cognizable injury—the fact that Nike took steps to enforce its trademark—is now gone and, given the breadth of the covenant, cannot reasonably be expected to recur. There being no other basis on which to find a live controversy, the case is clearly moot.” Nike denies the remaining allegations in Paragraph 25.

26. Nike denies the allegations in Paragraph 26.

27. Nike denies the allegations in Paragraph 27.

28. Nike denies the allegations in Paragraph 28.

29. Nike denies the allegations in Paragraph 29.

30. Nike denies the allegations in Paragraph 30.

31. Nike denies the allegations in Paragraph 31.

32. Nike repeats and incorporates by reference its responses to Paragraph 1 to 31 as though fully set forth herein.

33. Nike denies the allegations in Paragraph 33.

34. Nike denies the allegations in Paragraph 34.

35. Nike denies the allegations in Paragraph 35.

36. Nike denies the allegations in Paragraph 36.

37. Nike denies the allegations in Paragraph 37.

38. Nike denies BAPE is entitled to any of the relief it seeks in its counterclaim.

Dated: April 8, 2024

/s/ Michael J. Gershoni

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